

D.T.E. 01-81-A

Petition of Bay State Gas Company, pursuant to G.L. c. 164, § 94 and
220 C.M.R. § 6.00 et seq., for Authority to Establish a Gas Cost Incentive Mechanism.

ORDER ON MOTION FOR CLARIFICATION

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I. INTRODUCTION AND PROCEDURAL HISTORY

On December 4, 2002, the Department of Telecommunications and Energy (“Department”) issued an Order approving Bay State Gas Company’s (“Bay State” or “Company”) Gas Cost Incentive Mechanism (“GCIM”) for residential customers only. Bay State Gas Company, D.T.E. 01-81 (2002) (“D.T.E. 01-81 Order”). In approving the GCIM program, the Department directed Bay State to restrict the program to 25 percent of “normal residential requirements.” D.T.E. 01-81 Order at 32. The Department further directed the Company to apply the three-year historical average in determining the reliability premium associated with its GCIM program.¹ Id.

On December 24, 2002, Bay State Gas Company filed a Motion for Clarification (“Motion”) seeking further guidance on the implementation of the restriction concerning the availability of the GCIM program only to the residential classes (Motion at 1). Specifically, Bay State sought clarification as to: (1) how the residential-class restriction is to be carried out with respect to the Company’s supply portfolio; and (2) how to derive the three-year historical average calculation of the reliability premium (id.). On January 13, 2003, the Massachusetts Division of Energy Resources (“DOER”) filed a response to the Motion (“DOER Response”).

¹ Reliability premium is a reservation fee payable to suppliers to compensate them for setting aside, or reserving, supply deliverability (Exh. BSG-1 at 18).

II. BAY STATE GAS COMPANY'S MOTION FOR CLARIFICATION

A. Positions of the Parties

1. Bay State Gas Company

The Company states that the D.T.E. 01-81 Order does not specify whether the restriction of the GCIM program to 25 percent of normal residential requirements shall be accomplished on a physical basis, financial basis, or both (id. at 3). Bay State maintains that the Company's proposal sought to limit the financial transactions to 80 percent of domestic purchases rather than restrict the physical domestic purchases to 80 percent (id. at 2). Bay State argues that a physical restriction would create the potential for gaming by the Company and would complicate the determination of the portion of domestic storage gas subject to GCIM benchmarking (id. at 3). The Company maintains that any restriction applied to its physical gas purchases in the GCIM program would create an opportunity for the Company to "game" the operation of the GCIM because Bay State would be in the position to choose the purchases that resulted in the largest gains (id.). The Company asserts that the only way to avoid this potential for gaming would be to include 100 percent of its domestic physical gas purchases in the GCIM program (id.).

The Company also asserts that limiting the domestic purchases to the residential class only would also create a complication in determining the portion of domestic storage gas subjected to GCIM benchmarking (id.). Bay State asserts that it is unclear how the Company should determine the volume of storage injections that relate to meeting residential requirements (id.). Bay State proposes that the Department clarify the D.T.E. 01-81 Order by authorizing the Company to include all domestic physical purchases, including those for

storage injections, to the pertinent benchmark comparison under the GCIM program (id. at 4).

The Company maintains that including all physical gas purchases in the GCIM program will have no impact on the Cost of Gas Adjustment Clause prices for the Commercial and Industrial (“C&I”) customer classes, which are not included in the GCIM program (id.).

The Company also seeks clarification as to: (1) which three-year period should be used to calculate the reliability premium; and (2) whether the reliability premium should be modified each year of the program to reflect the then most recent three-years of historical information (id.). Bay State maintains that the three years of data provided by the Company in its filing are no longer the most recent information available (id.). The Company requests that the Department clarify how the reliability premium should be calculated at the outset of the GCIM program and whether the reliability premium should be updated each year of the program (id. at 5).

2. Division of Energy Resources

With respect to limiting the GCIM program to 25 percent of total residential requirements, DOER maintains that all physical domestic purchases should be included in the GCIM program (DOER Response at 3). DOER argues that including all physical domestic purchases will maximize customers’ savings and prevent the potential for market abuse (id.). Regarding the calculation of the reliability premium, DOER recommends using the data compiled for the three winter periods preceding the commencement of the GCIM program (id. at 4). DOER argues that the reliability premium should remain fixed for the term of the GCIM to prevent the potential for gaming by the Company (id. at 5).

III. STANDARD OF REVIEW

_____ Clarification of previously issued Orders may be granted when an Order is silent as to the disposition of a specific issue requiring determination in the Order, or when the Order contains language that is sufficiently ambiguous to leave doubt as to its meaning. Boston Edison Company, D.P.U. 92-1A-B at 4 (1993); Whitinsville Water Company, D.P.U. 89-67-A at 1-2 (1989). Clarification does not involve reexamining the record for the purpose of substantively modifying a decision. Boston Edison Company, D.P.U. 90-335-A at 3 (1992), citing Fitchburg Gas & Electric Light Company, D.P.U. 18296/18297, at 2 (1976).

IV. ANALYSIS AND FINDINGS

In the D.T.E. 01-81 Order, the Department limited the physical purchases to 25 percent of the Company's normal residential requirements portfolio. D.T.E. 01-81 Order at 32. This restriction was a result of limiting the GCIM program to the residential class only. If the Department were to allow the Company to include all domestic purchases, the program would involve resources that have been paid for by all of Bay State's sales customers, including its C&I customers, which the Department has excluded from the Company's GCIM program. Under those circumstances, the Company and its residential customers could benefit from the utilization of assets that have been partially paid for by the Company's C&I customers. The Department has long held that margins should be returned and financial benefits awarded to the specific customer classes that pay for the assets that the Company utilized to derive that benefit. See Interruptible Transportation/Capacity Release D.T.E. 93-141-A at 63 (1996). Therefore, the Department denies Bay State's Motion, and the Department retains the directive

that limits the physical purchases in Bay State's GCIM program to 25 percent of the Company's total residential requirements portfolio.

Bay State has also argued that unless it is allowed to include all of the domestic purchases in its GCIM program, the Company would be in a position to game the system. In particular, the Company states that the opportunity exists for the Company to benchmark its GCIM purchases against purchases that would give Bay State an unintended advantage. We agree with the Company that the opportunity exists for Bay State to game the system in its favor. Therefore, in order to minimize the potential for gaming, the Department directs Bay State to benchmark its GCIM-related purchases against the weighted average cost of all of its domestic acquisitions at the time the transaction(s) take place. We direct the Company to apply the same methodology to storage gas as it does to pipeline gas. In particular, for benchmarking purposes, the Company should use the weighted average cost of gas in storage.

Next, the Company sought clarification on the development of the three-year average for calculation of the reliability premium. In approving the GCIM program, the Department directed Bay State to apply a three-year historical average in determining the reliability premium without specifying whether the data should remain fixed or revised annually. The Company requested that the Department clarify how the reliability premium should be calculated at the outset of the GCIM program and whether the reliability premium should be updated each year of the program.

The Order did not address whether a fixed or rolling period should be used to calculate the reliability premium. Thus, a clarification is necessary. The use of the three-year rolling period in determining the reliability premium is consistent with Department policy. See

Boston Gas Company, D.P.U. 96-50 at 261, 311, 338 (1996); Western Massachusetts Electric Company, D.P.U. 95-8-CC Phase 11 at 31, 43 (1995). The Department finds that over the term of the GCIM, a reliability premium based on data from the same three-year period would less accurately reflect fluctuating market conditions than a reliability premium based on updated, more current data. The Department directs Bay State to develop a three-year average using data from the most recent three-year winter period prior to implementation of the GCIM program. The Company should then update the calculation annually at the outset of each year of the GCIM program using a rolling three-year average from the previous three winter periods. To eliminate the potential for gaming, the Department directs the Company to use the same method for calculating the reliability premium at the outset of each year of the GCIM program.

IV. ORDER

Accordingly, after due notice and consideration it is

ORDERED: That Bay State's Motion for Clarification is granted, in part, and denied, in part; and it is

FURTHER ORDERED: That Bay State Gas Company shall comply with all directives regarding the implementation of the Gas Cost Incentive Mechanism contained in this Order.

By Order of the Department,

Paul B. Vasington, Chairman

James Connelly, Commissioner

W. Robert Keating, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).